

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| KONECRANES, INC.,                     | ) |                      |
| <i>Plaintiff/Counter-Defendant,</i>   | ) |                      |
|                                       | ) |                      |
| <i>vs.</i>                            | ) | 1:12-cv-1700-JMS-MJD |
|                                       | ) |                      |
| BRIAN SCOTT DAVIS, <i>et al.</i> ,    | ) |                      |
| <i>Defendants/Counter-Plaintiffs.</i> | ) |                      |

**ORDER**

On July 25, 2013, Plaintiff/Counter-Defendant Konecranes, Inc. (“Konecranes”) answered the Defendants/Counter-Plaintiffs’ Counterclaim. [Dkt. 54.] In that answer, Konecranes denies that Count I (Unfair Competition) of the Defendants’ counterclaims is compulsory under Federal Rule of Civil Procedure 13(a), asserts that Count I is subject to a mandatory arbitration provision, and denies that this Court is the proper venue for Count I. [Dkt. 54 at 2 ¶ 4, 3 ¶ 6.] Konecranes admits that the Court has jurisdiction over Count II (Abuse of Process) as a compulsory counterclaim and that venue is proper with regard to that count. [*Id.*] The same day it filed its answer, Konecranes also filed a Motion to Dismiss for Improper Venue (Count I) and Motion to Dismiss for Failure to State a Claim (Count II). [Dkt. 55.]

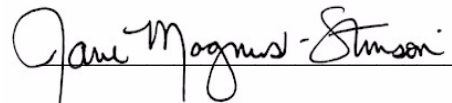
An assertion in Konecranes’ Answer gives the Court pause about ruling on its motion. Specifically, Konecranes denies that the Court has diversity jurisdiction over the Defendants’ counterclaims “as there are no facts pled that suggest that the amount in controversy exceeds \$75,000.” [*Id.* at 2-3 ¶ 5.] Konecranes does not specify which counterclaim it is addressing with that statement, which, in fact, refers to both “counterclaims.” [*Id.*]

The Court has supplemental jurisdiction over compulsory counterclaims under 28 U.S.C. § 1367. Fed. R. Civ. Pro. 13(a); *Oak Park Trust & Sav. Bank v. Therkildsen*, 209 F.3d 648, 651

(7th Cir. 2000). Permissive counterclaims, however, fall outside of supplemental jurisdiction and require “an independent basis of federal jurisdiction.” *Id.*

The Court **ORDERS** the parties to conduct whatever investigation is necessary and file a joint statement, or competing statements if they cannot agree, by **August 9, 2013**, detailing each party’s position as to whether each counterclaim is compulsory or permissive and, if either of them is permissive, the independent basis for the Court’s jurisdiction over that claim.

07/29/2013

A handwritten signature in black ink, reading "Jane Magnus-Stinson". The signature is written in a cursive, flowing style. The first name "Jane" is written in a larger, more prominent script, followed by "Magnus-Stinson" in a slightly smaller, more compact script. The signature is positioned above a horizontal line.

Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

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